

F<sup>1</sup>  
first layer has a depth greater than any embossed portion of the second layer, and  
wherein said second layer is said wear layer, and

[said method further comprising] applying said wear layer before chemical  
embossing.

F<sup>2</sup>  
4<sup>1</sup> 34. (Amended) The method of claim ~~23~~<sup>1</sup>, wherein said first layer is a foam  
layer [and said second layer is a wear layer].

#### REMARKS

Claims 33-46 are currently pending in this application. Claims 33 and 34  
have been amended. Support for the amendment to claim 33 can be found in  
canceled claim 47.

As reported in the Information Disclosure Statement filed herewith, Applicants  
have been presented with documentation and a product sample that a third party  
alleges establishes an offer for sale or a sale of a vinyl flooring product by the third  
party more than one year before Applicants' filing date. The third party has refused  
to allow Applicants to submit the documentation and sample to the U.S. Patent and  
Trademark Office. For the reasons presented in the Information Disclosure  
Statement, it is Applicants' opinion that the documentation and product sample fail to  
establish a *prima facie* case of anticipation or obviousness.

In an abundance of caution, however, Applicants have amended claims 33  
and 34 assuming the third party's allegations can be substantiated. Applicants' on-  
going investigation may confirm Applicants' opinion that the evidence does not  
establish an offer for sale or a sale of the product sample. Accordingly, Applicants

reserve the right to prosecute the allowed, excised subject matter in a copending patent application without prejudice.

In view of the foregoing amendments and remarks, Applicants respectfully request the reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this amendment and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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